IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1822 of 2006

with
CRIMINAL MISC. APPLICATION No.11771 of 2006
in
CRIMINAL APPEAL No. 1822 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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INDRAJIT SURESHPRASAD BIND & 2 - Appellant(s)
Versus
THE STATE OF GUJARAT - Opponent(s)

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Appearance :
MR MB MASARIA for Appellant(s) : 1 - 3.
MR.H.L. JANI, ADDL. PUBLIC PROSECUTOR for the Opponent.

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 04/12/2006

ORAL JUDGMENT

The appellants-original accused in Sessions Case No.193 of 2005 are before this Court.

2. The learned Additional Sessions Judge, Fast Track Court No.4, Ahmedabad by judgement and order dated 15th September 2006, is pleased to convict the accused for the offence under section 498A read with sec.114 of the IPC and awarded 2 years rigorous imprisonment, fine of Rs.1000/-, in default 6 months simple imprisonment.

The learned Additional Sessions Judge is pleased to convict the accused for the offence under sec.304B read with sec.114 of IPC and awarded 7 years rigorous imprisonment, fine of Rs.1000/-, in default 6 months simple imprisonment.

Further, the learned Additional Sessions Judge is pleased to convict the appellants for the offence under sec.306 read with sec.114 of IPC and awarded 5 years rigorous imprisonment, fine of Rs.1000/-, in default 6 months simple imprisonment by his judgement and order dated 15th September 2006. The present

appeal was though filed on 11th October 2006 was taken up for hearing on 14.11.2006. After arguing the matter for quite some time, Mr.M.B. Masaria, sought for time to enable him to produce necessary documents. Time was granted upto 24.11.2006.

On 24.11.2006 learned advocate Mr.M.B. Masaria filed leave note. Therefore, the matter was adjourned for today, i.e. 04.12.2006.

3. Today, learned advocate produced a Paper Book for perusal and appreciation of evidence to decide the matter. The learned advocate submitted that he had produced the papers (Paper Book) for hearing of the matter for admission only.

4. Learned advocate for the appellants invited attention of the Court to the deposition of the complainant- Munna Kumar Shri Rajendraprasad Bind, who is examined as PW-3 at exh.24. He also invited attention of the Court to the deposition of one Dineshkumar P. Bind, who is examined as PW5, at Exh.34.

The learned advocate for the appellants vehemently submitted that the evidence of PW-5, Dineshkumar Bind cannot be considered for recording conviction holding that it establishing the 'demand of dowry', because on the point of 'demand of dowry', in the cross examination this witness has admitted that, “Munnabhai is my brother on the father's side (paternal cousin); that as and when Munnabhai used to meet me, he used to talk about Rinkuben (the deceased); that it is true that whatever I know about Rinkudevi, the same I have learnt from the talk between me and Munnabhai.” Learned advocate, submitted that this admission shows that the evidence of this witness-PW 5, Dineshkumar is 'hear-say' evidence and therefore, the same is of no help to the prosecution.

The learned advocate for the appellants is right in saying that 'hear-say evidence' is 'no evidence' in the eye of law, but then this is not the only evidence relying on which the learned Additional Sessions Judge has recorded the conviction. Even in absence of this particular evidence, i.e. deposition of PW-5, there is evidence against the appellants,

relying on which the conviction is recorded.

5. The learned advocate for the appellants invited attention of this Court to the decision of this Court in the matter of **State of Gujarat Vs. Bharatbhai Balubhai Lad & others**, reported in 2006 (1) G.L.R. 514, in support of his say that, 'hear-say evidence' is 'no evidence' and the same cannot be relied upon for recording conviction. There cannot be any dispute on this well settled proposition of law and therefore, no further discussion is required on this point.

6. Learned advocate for the appellants next invited attention of the Court to the deposition of one Bhagvat Bodhram Sharma, who is examined as defence witness no.2 at exh.45. The learned advocate submitted, that this witness is a friend of appellant no.1 herein, i.e. Indrajit Prasad-husband of the deceased. He submitted that this witness has clearly stated that, 'accused no.1 had married to Rinkudevi in the year 2002. The name of the brother of Rinkudevi is Munnabhai. I know him. After 2003, Rinkudevi had come to stay with accused no.1 at

Ahmedabad. Munnabhai, brother of Rinku had come to drop her at Ahmedabad. But Munnabhai had taken Rinkuben with him as she was not willing to stay at Ahmedabad, she wanted to go back to her home. Such incident was repeated on two-three occasions. In the month of May 2004, Munnabhai had taken me and other persons to the residence of the accused and had persuaded Rinkudevi to stay at Ahmedabad, he had also persuaded the family of Indrajit to keep Rinkudevi with them. I had gone to the house of the accused. Rinkudevi had told that, 'I am not going to stay here'. That mental condition of Rinkudevi was not good. Accused no.1 was operated. Despite that Munnabhai left Rinkudevi at Ahmedabad and went away. On the next day, Rinkudevi committed suicide.'

7. The witness further deposed that, “When we went to the house of Indrajit (accused-appellant no.1) the accused had not demanded dowry. There was a talk about paying Rs.22,000/- between Munnabhai and the accused.” The witness is cross examined by learned APP, Shri Y.R. Desai, but except reiteration of what is said in the chief, nothing material could be brought out in the cross examination. The deponent

has stated that, 'he is serving and he goes to his job at 6.30 AM, and comes back at 4.00 PM and from the house of the deponent it cannot be seen as to what is happening in the house of Indrajit.'

8. The learned advocate for the appellants strenuously tried to convince this Court that from the evidence of this defence witness, the learned Judge ought to have held that the mental condition of the deceased was bad and that though she was not willing to stay at Ahmedabad she was forcibly left at Ahmedabad by her brother, Munnabhai and that led her to commit suicide, and 'demand of dowry' or any harassment from the accused-appellant herein was not the cause behind the suicide by the deceased.

The learned advocate for the appellants submitted that, his submission is not correctly recorded by this Court, his submission in fact is that, 'this witness, Bhagwat Sharma was in fact witness of the prosecution side, but as the prosecution had dropped him as witness, the defence had to examine him as its witness. The learned advocate for the appellants submitted that the learned Additional Sessions Judge

ought to have drawn an adverse inference from the fact this witness was though initially cited as witness by prosecution was dropped and was examined by defence.

From the deposition of the said witness, it nowhere transpires that the witness was to depose in favour of the prosecution and therefore, the prosecution wanted to examine him as a prosecution witness. The learned advocate made this submission without appreciating that this witness was neither cited as witness by the prosecution in the charge sheet, nor any Purshis to drop this witness as prosecution witness was filed. That being so, the assertion that the witness was to be examined as prosecution witness is uncalled for.

The learned advocate however, continued to assert that, as this witness is cross examined by the learned APP, it should be inferred that he was to be examined as prosecution witness. The learned advocate also submitted that, as he has stated in his cross examination that, 'he had stated to the Police that, he had gone with Munnabhai to the house of the

accused" shows that he had given Police statement or in the alternative Police had recorded his statement. The learned advocate is labouring under misconception that all the persons, whose statements are recorded by the Police are necessarily prosecution witnesses. The submission of the learned advocate is totally misconceived and misplaced. The fact is that, this person is examined as 'defence witness' and the necessary inference from this is that it was done only be active decision of the advocate for the defence. Merely because a statement is recorded of this particular witness does not render him a prosecution witness.

9. The learned advocate out of frustration submitted that the deposition of one Shri Kalubhai Rajubhai Chauhan is not considered, it should have been taken into consideration. This 'Kalubhai R. Chauhan' is PSI, who was serving as PSI at Vatva Police Chowky on 25.04.2005. He has stated in para 2 of his deposition that, 'in this case it was necessary to record the statement of the witnesses by visiting the State of Bihar and therefore, after obtaining necessary sanction, ASI, Dipsingh Vaghela

was set to Bihar, he recorded the statements and those were given to the deponent (Kalubhai Chauhan) on 20.07.2004, after that the deponent undertook further investigation.

The matter was filed on 11.10.2006, and was taken up for hearing only on 14.11.2006. On 14.11.2006 also the matter was adjourned for 10 days to enable the learned advocate to get ready with the matter and produce necessary documents, which he may like to rely upon. On 24.11.2006 the matter was adjourned to 04.12.2006.

The opening sentence of the witness, Bhagwat Sharma is that, “I know the accused persons. They are staying in my neighobourhood. ..” This shows that this witness was never in Bihar. He was available at Ahmedabad and his statement was recorded by the Police in Ahmedabad. It was the learned advocate appearing for the accused in the trial court who had chosen him to be examined as defence witness.

The submission of learned advocate that, 'he was a

prosecution witness and as he was dropped by the prosecution, he was examined as defence witness', is not borne out from the record. There is nothing on record to show that this particular witness was ever cited as witness by the prosecution, and later on he was dropped and the accused examined him as defence witness.

Learned advocate invited attention of the Court to the deposition of one Avdheshbhai Trimurti Prasad. He is examined as DW-1, at Exh.43. This witness is related to the accused. Incidentally, his in-laws reside in the same village that of the deceased. Not only that her wife happened to be the friend of the deceased-Rinkudevi. These facts have come on record in para 1 of the deposition of this witness.

The witness has stated that, 'I am staying with my parents and my wife at the place aforesaid in the title of the deposition it is stated that he is residing at village 'Karanbigah', District Nalanda, Bihar. The name of my wife is Punamdevi. The name of my wife's friend was Rinkudevi. This Rinkudevi was visiting my house. I am shown Mark 30/8-photograph. It is that of my wife, Punamdevi and

Rinkudevi on the right is my wife Punam and on the left is Rinkudevi.

The learned advocate emphatically pressed into service the deposition of this witness, particularly para 2, which is as under:

> “2. Marriage of Rinku had taken place in the year 2002 with accused no.1. After marriage she was staying at village Chakshiria with the complainant. I had learnt from Rinkudevi during my introduction with Rinku that she was not happy to reside at Ahmedabad at her in-laws place. Rinkudevi's mental condition was not good. She never wanted to part from her mother. Therefore, Rinku was not happy to come to Ahmedabad in the year 2004. Rinkudevi's medical treatment was going on. Rinkudevi was taking treatment of Dr.Shivnarayan Singh of Village Behta. I had also gone to the doctor once with Rinkudevi. .. “

10. Learned advocate submitted that this evidence should have clinched the issue of 'mental condition' of the deceased and she having committed suicide on account of her 'mental condition', in addition to her

unwillingness to stay at Ahmedabad with her in-laws.

From the cross examination of this witness it is clear that this witness, who has written letter dated 23.02.2004-exh.44 to the parents of the husband of the deceased (who are appellants no.2 and 3 in this appeal) has addressed them as 'maternal uncle' 'mamaji' and 'maternal aunt'-'mamiji' and husband of the deceased as brother (accused- appellant no.1 in this appeal) has come forward to oblige the accused. He has denied all that what he deposed in the chief examination. What is important is the contents of para 6 of his deposition. There he has stated that, “it is not true that I am stating false that the accused were demanding dowry from Rinkudevi. It is not true that Munnabhai had agreed to pay Rs.22,000/- towards scooter. It is not true that I am giving false deposition at the instructions of the accused.”

What follows is important. The deponent had stated that, “I am able to identify the hand writing of Rinkudevi. I am shown the letter, Mark 6/4. I say that the hand writing is not that of Rinkudevi. I am shown the cover, mark 6/5. Seeing that I say that

the writing on that cover is not of Rinkudevi.”

In answer to the last question put by the learned APP, the deponent stated that, “my marriage had taken place on 02.05.2002.”

To test the trustworthiness of this witness, who is a resident of Village-'Karanbigah', District Nalanda, State of Bihar, who is married to a girl, Punam from Village 'Chakshiria', Post 'Pabheda', Taluka 'Dhanruva', District Patna in the State of Bihar in the year 2002, it is required to be appreciated that, he has deposed that, 'he is able to identify the hand writing of the deceased, Rinkudevi, who happened to be a friend of his wife'. Rinkudevi was staying at a distance of 2-3 houses from the house of his in-laws in the same village (Chakshiria). After his marriage which took place in the year 2002, when did he get an opportunity to identify the hand writing of the friend of his wife. This statement that, he is able to identify the hand writing of the deceased is to be appreciated in light of the fact that he writes a letter to the appellants-accused and addresses him as brother and as maternal uncle,

'mamaji' and maternal aunt 'mamiji' to appellants no.1, 2 and 3 of this appeal. It is clear that he came to oblige the defence side. His evidence cannot be relied upon.

The learned advocate for the appellant next invited attention of the Court to a letter written by this witness, Exh.44. It is an 'Inland Letter'. It was addressed to accused-appellant no.2 “Shri Sureshprasad, C/o Indrajit Prasad Bind”. Necessary inference which can be drawn from the manner in which this letter is addressed is that, the deponent knew 'Indrajit Prasad' only and not Sureshprasad, that is why he mentioned names of accused nos.1 and 2 both.

11. This letter is dated 23.02.2004. The contents of the letter are that, “the special reason to write this letter is that I and my family both had gone to 'Chakshiria', in-laws' place on 15.02.2004. We had stayed there for 4-5 days and on 21.02.2004 we have returned home. At Chakshiria everyday I had a meeting with wife of Indrajit-Anitadevi. I and my wife had tried to persuade her to come to Ahmedabad,

but she is not willing to leave 'Chaksiria'. She was saying that, 'Munnabhai wants to send me forcibly to my in-laws at Ahmedabad, but I will not go. If under pressure I am required to go then I will commit suicide. I do not want to be separated from my mother and father in any circumstances."

The letter proceeds to say that, "Mamaji (maternal uncle) from the talk of Anita, it is sure that she does not want to come to Ahmedabad. Therefore, she is not required to be called forcibly. Even if you are called by Munnabhai, do not take Anitadevi or else the girl may put you in trouble. I have told this to her brother, Munnabhai also."

This letter is dated 23.02.2004. In this letter the deponent of Avdhesh Kumar has not mentioned anything about the mental health of the deceased nor about the treatment, if any, the deceased might be undergoing. On a plain reading of the letter it appears that this letter is written only with a view to help the accused.

The learned advocate for the appellants relied upon a decision of this Court in the matter of **Harjit Singh Vs. State of Punjab** reported in 2006 Criminal Law Journal 554 and also a decision of Punjab & Haryana High Court in the matter of **State of Haryana Vs. Shivnath Rai and another**, reported in 1997 Criminal Law Journal 404. The learned senior advocate neither gave citation of these case to Court Sheristadar in advance nor did produce xerox copies thereof. Hence this Court is not able to consider those citations in detail.

12. Learned advocate invited attention of the Court to exh.30, a list by which documents mentioned therein are produced by defence. These documents include the case papers of the so called treatment of the deceased by Dr.Shivnarayan Singh. The certificate issued by the said doctor is dated 18.03.2004. The letter head is in Hindi. It bears two rubber stamps, one in the title part and the other at the bottom. The read as under:

This/ these document/s is/ are not (illegible) in the proceeding.	“Dr.Shivnarayan Singh, M.S. (General Surgery) MCH (G.I. Surgery)”

The contents of the certificate reads as under:

> “Certified that Bind Rinkuben, wife of Indrajit .. (illegible) at village Baravan PS Gauri Chowk, Dist. Patna is suffering from mental depression (spelt as 'Dipresan') (M.D.) from 10.1.04. She is advise to continue treatment and rest.'

Neither the contents of the certificate nor its letterhead with the contents of the rubber stamp inspire any confidence. It says that the doctor is stationed at village Bihta, the Code of which is mentioned to be 06115 along with telephone nos. (clinic) 252411, (residence) 252808. A General Surgeon stationed at Village Bihta issuing certificate for mental disease – depression do not inspire any confidence.

13. Heard learned APP, Mr.Jani. Mr.Jani invited attention of the Court to the deposition of the

complainant, who is examined at PW-3, at Exh.24. The witness has deposed in terms that he had been to Ahmedabad after receipt of a letter from her sister, he had come to Ahmedabad and had then gone to the residence of the accused with the members of the case and had agreed to pay Rs.22,000/- to the accused for scooter. It was assured that this amount will be paid by 'Poonam' - full moon day of the month 'Jeth' of the year 2004. Thereafter, he had gone to his village. He has denied that his sister had any illness and that she was under treatment for any illness. The witness is cross examined at length. He is confronted with the case paper of Dr.Shivnarayan Singh, certificate issued by the doctor, photograph (mark 30/8), letter written by the complainant (deponent) to the deceased (mark 30/5), which is exhibited as Exh.31. On a careful examination of the cross examination of the witness, there is nothing which will destroy the case of the prosecution.

At the end of the deposition, it is recorded that the deposition is read and explained to the deponent in Hindi.

Mr.Jani, learned APP invited attention of the Court to exh.31, letter written by the complainant to the deceased, it is dated 25.04.2004. Mr.Jani read the entire letter and submitted that from the letter it is clear beyond doubt that the accused were pressing for dowry and there was torture to the deceased for non compliance of the demand of dowry. The letter is also having a philosophical touch, like one has to improve oneself to see that he is happy in life. It also says that 'health is wealth'. It also advises that who gets up early in the morning, who practises Pranayam after being free from answering natural call one should drink water, which is very important. It also advises that you have to establish your own identity and you have to establish that you are from a very noble (sadhu) family. It also advises that Rinku (sister) shall not worry about either mother, father, brother, brother's wife or children. It also says that if you are happy, all are happy. If you are in miseries, everybody is sad. The letter then proceeds to state that the life (of the writer) is divided in three ends. At one end

sister, on the other end son, (Pradyuman) and at the third end the family, which is getting broken. The writer then takes the responsibility of the illness of his son, who otherwise should have ahead of the parents.

What follows is important. The writer says that whatever has happened with you, I am responsible for the same. He says that, father had got married two brothers and a sister in his own way thinking of giving and taking dowry, which was not correct according to the thinking of the writer. Therefore, he intervened in the marriage of the sister and marriage was performed without any dowry, which he found to be wrong. Therefore, he admits that whatever way was followed by his elders was the correct way. He states that sister should not think about Rs.33,000/- and should not think as to from where will her brother pay this amount. He states that I have self confidence and high thinking, by which Rs.33,000/- is not a big amount. He can arrange for Rs.43,000/- provided sister remains all right. Sister should not have any trouble.

The letter is more than clear and vocal about the reality with regard to the demand of dowry and torture, to which the deceased was subjected to.

14. Learned APP, Mr.Jani also invited attention to exh.49. This is letter dated 16.02.2004, It is this letter, which is replied by letter at exh.31. In between, after the receipt of this letter dated 16.02.2004, brother of the deceased visited Ahmedabad and agreed to pay an amount for purchase of scooter. If the dates are tallied, it becomes clear that though in his visit after about 15 days from the date of receipt of letter dated 16.02.2002, brother of the deceased could not fulfil his promise, which resulted into increased torture which led to the deceased committing suicide.

15. This is a social menace, which despite a legislation on the point is not coming under control, only because accused get away with the guilt. This is a case which if taken in its true perspective is

too clear. A girl from a distant place from Bihar is married in a family at Ahmedabad. By her brother advocating for marriage without dowry and then repents for the same as he found that though the accused pretended to agree to marriage without dowry, later on started torturing his sister for dowry and that torture crossed all its limits ultimately resulting in the death of his sister.

16. Having gone through the evidence in detail, the conviction recorded and sentence awarded by the learned Additional Sessions Judge is found to be just and proper. In the result the appeal fails and the same is dismissed.

17. In view of the fact that the appeal is dismissed. Criminal Misc. Application No.11771 of 2006 does not survive. The same is disposed of accordingly.

(RAVI R. TRIPATHI, J.)

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